IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1468 of 2002
to
FIRST APPEAL No. 1470 of 2002
with
FIRST APPEAL No. 1072 of 2002
to
FIRST APPEAL No. 1074 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OIL & NATURAL GAS CORP.LTD. - Appellant(s)
Versus
AMRUTBHAI BHIKHABHAI & 1 - Defendant(s)

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Appearance :
Mr.K.M.Thaker for M/S TRIVEDI & GUPTA for General Manager, ONGC Ltd. in all appeals.
Mr.A.J.Patel for original claimants in all appeals
Mr.S.S.Patel,learned AGP for Spl.Land Acquisition

Officer, in all appeals.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 30/06/2006

COMMON ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. First Appeal Nos.1464 of 2002 to 1470 of 2002 are filed by Oil & Natural Gas Corporation Limited, i.e. Acquiring Body, against common judgment and award dated July 31, 2001 rendered by the learned Extra Assistant Judge, Mehsana, in Land Acquisition Reference Nos.1537 of 1995 to 1538 of 1995 and 1526 of 1995 by which the appellant and the respondent No.2 are directed to pay additional compensation to the claimants for their acquired lands at the rate of Rs.116=00 per sq.mtr. over and above the amount of compensation offered by Land Acquisition Officer at the rate of Rs.20=00 per sq.mtr.

First Appeal Nos.1072 of 2002 to 1074 of 2002 are filed by the claimants against above-referred

to common judgment and award wherein their claim is that the Reference Court should have awarded compensation to them at the rate of Rs.130=00 per sq.mtr.

2. As the appeals filed by the Acquiring Body and the claimants are directed against common judgment and award, we propose to dispose them of by this common judgment.

3. The Deputy General Manager, ONGC, had proposed to the State Government to acquire lands of village Saij, Taluka Kalol, District Mehsana for ONGC Drilling. On receipt of the proposal, the State Government was satisfied that the lands of village Saij were likely to be needed for the said purpose. Therefore, Notification under Section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in Government Gazette on July 8, 1993. The land owners had objected to the acquisition. After considering the objections lodged by the land owners,the Special Land Acquisition Officer, ONGC, had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the

said report, the State Government was satisfied that the lands,which were specified in the notification published under Section 4(1) of the Act, were needed for public purpose of ONGC Drilling. Therefore, a declaration under Section 6 of the Act was made which was published in the Government Gazette on November 23,1994.Thereafter, notices were served on the owners under Section 9 of the Act for determination of compensation. Having regard to the evidence adduced before him, the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.20=00 per sq.mtr. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, by making applications, they had required the Special Land Acquisition Officer to refer the matters to the District Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Mehsana, which were registered as Land Acquisition Reference Nos.1537 of 1995 to 1538 of 1995 and 1526 of 1995. In Reference Applications, it was pleaded by the claimants that having regard to the development which had taken place near the lands acquired and income derived by

the claimants from sale of agricultural produces, they were entitled to compensation at the rate of Rs.300=00 per sq.mtr. The reference applications were opposed by the appellant and the respondent No.2, inter alia, contending that the Special Land Acquisition Officer had determined the amount of compensation payable to the claimants after considering sale instances as well as situation of the lands acquired and their fertility and, therefore, reference applications should be dismissed.

4. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court. On behalf of the claimants, Mr. Amratbhai B Patel was examined at Exhibit 19. The witness had stated about fertility of the lands acquired and the development which had taken place in the nearby area. He had also produced the awards of District Court relating to the lands acquired from that very village, i.e. village Saij, wherein Reference Court had granted compensation to the claimants at the rate of Rs.90=00 per sq.mtr at Exhibits 16 & 18. The witness had further produced judgment of the High Court rendered

in First Appeal Nos.7317 to 7342 of 1995 wherein the High Court had reduced the amount of compensation payable to the claimants from Rs.90=00 to Rs.80=00.The order of the Supreme Court rendered in Civil Appeal No.6771 of 2000 was also produced by the said witness at Exhibit 30 which indicated that the judgment of the High Court was confirmed by the Supreme Court. The witness had asserted in his deposition that the lands, which were acquired earlier from village Saij, were situated at a distance of 200 mtrs. from his lands which were acquired in instant case. The claimants had also examined Mr.S.C.Parmar at Exhibit 22 in support of their claim for higher compensation. Mr.Parmar had produced sale deeds at Exhibit 26/1 to 26/3 as well as map indicating location of the lands acquired. None was examined as a witness on behalf of the appellant or the respondent No.2.

5. On the basis of evidence adduced by the claimants, the Reference Court deduced that previous awards relating to lands of this very village were relevant for the purpose of determining market value of the lands acquired in instant

case. After placing reliance on the previous awards relating to the lands of village Saij, the Reference Court held that the claimants would be entitled to compensation at the rate of Rs.80=00 per sq.mtr. It was noticed by the Reference Court that in earlier case, notification under Section 4(1) of the Act was published in Government Gazette on April 1, 1986 whereas in instant case, notification under Section 4(1) of the Act was published on July 8, 1993, and as there was gap of seven years between the notifications issued under Section 4(1) of the Act, the claimants were entitled to reasonable rise in the price of the lands at the rate of 10% per annum. In ultimate analysis, the Reference Court held that the claimants would be entitled to compensation at the rate of Rs.116=00 per sq.mtr. by judgment dated July 31, 2001, which has given rise to instant appeals.

6. Mr.K.H.Thaker, learned counsel of the Acquiring Body, contended that no cogent and reliable evidence was produced by the claimants to establish their case that the lands which were acquired from this very village were similar in all respects to the lands acquired in instant case and, therefore,

the previous award of the Reference Court, as modified by the High Court, should not have been relied upon for the purpose of determining the market value of the lands acquired in this case. What was maintained by the learned counsel of the Acquiring Body was that potentiality of the lands acquired earlier being quite different from that of the lands acquired in instant case, the previous award should not have been made basis for determining market value of the lands acquired. According to the learned counsel, the method adopted by the Reference Court for determining market value of the lands acquired in instant case being erroneous, the appeals should be accepted.

7. Mr.A.J.Patel, learned counsel of the claimants, on the other hand, asserted that the evidence of the two witnesses examined by the claimants establishes that the lands which were acquired earlier from this very village were similar in all respects to the lands acquired in instant case and, therefore, no error was committed by the Reference Court in placing reliance on previous award, as modified by the High Court, for

determining the market value of the lands acquired in this case. According to the learned counsel of the claimants, having regard to the evidence led by the claimants, the claimants should have been awarded compensation at the rate of Rs.130=00 per sq.mtr. and, therefore, the appeals filed by the claimants should be accepted by the Court. Further, the learned counsel of the claimants referred to two decisions rendered in (i) Sunder v. Union of India, 2001 (3) G.L.H. 446; and (ii) Nagpur Improvement Trust v. Vasant Rao & Ors., 2003 (1) G.L.H.140, and pleaded that as the claimants would be entitled to interest on the amount, which is awarded under Section 23(1-A) & 23(2) of the Act, the award of the Reference Court should be suitably modified by holding that the claimants would be entitled to interest on the amount awarded under Section 23(1-A)& 23(2) of the Act. Mr.S.S.Patel, learned Assistant Government Pleader,has adopted the arguments advanced by the learned counsel of the Acquiring Body, and pleaded that the appeals filed by the Acquiring Body should be accepted whereas the appeals filed by the claimants should be dismissed.

8. We have heard the learned counsel of the parties, and taken into consideration the evidence adduced by the claimants before the Reference Court. From the record of the case, it is evident that sale instances produced were not relevant, because neither vendor nor vendee was examined nor it could be pointed out that the lands which were subject matter of sale deeds were situated in vicinity of the acquired lands in this case. Under the circumstances, we are of the opinion that the Reference Court did not commit any error in not placing reliance on the sale deeds produced by the claimants. The witness examined on behalf of the claimants had produced previous award of the Reference Court relating to lands which were acquired from this very village at Exhibit 16. Before considering the said award, it is relevant to notice that the claim of the witness examined on behalf of the claimants was that the lands which were acquired earlier were situated at a distance of 200 mtrs. from the lands which were acquired in this case and were also similar in all respects. This assertion made by the witness of the claimants could not be demolished either by the appellant or the respondent No.2 during his cross

examination. Further, no witness was examined by the appellant or by the respondent No.2 to show that the lands which were acquired earlier were not similar in all respects to the lands acquired in this case. Under the circumstances, this Court is of the opinion that the Reference Court was justified in placing reliance on previous award relating to the lands of this very village for the purpose of determining market value of the lands acquired in this case. Exhibit 16 shows that the lands of village Saij were acquired for this very purpose, i.e. ONGC Drilling, and notification under Section 4(1) of the Act was published in Government Gazette on April 1,1986. Exhibit 16 further indicates that the Land Acquisition Officer by his award dated January 22, 1986 had offered compensation to the claimants at the rate of Rs.16=00, 18=00 and 20=00 per sq.mtr. after resorting to Belting method. Feeling aggrieved by the offer of the compensation made by the Special Land Acquisition Officer, the claimants had approached the Reference Court, i.e. District Court, Mehsana, and the Reference Court had awarded additional compensation to the claimants at the rate of Rs.90=00 per sq.mtr. by judgment and award

dated October 26,1993, which was rendered in Land Acquisition Reference Case Nos.69 of 1986 to 73 of 1986. Thereupon,the State Government had approached this Court by way of filing First Appeal No.7317 of 1995 to 7342 of 1995 and challenged award of the Reference Court. The claimants had filed Cross Objections Nos.125 of 1998 to 150 of 1998 for claiming higher compensation. On review of the evidence adduced in that case, the High Court by judgment dated October 12, 1998 held that the claimants were entitled to compensation at the rate of Rs.80=00 per sq.mtr., and not at the rate of Rs.90=00 per sq.mtr.as was held by the Reference Court. The Acquiring Body, i.e. Project Manager, ONGC Limited, had challenged the judgment of the High Court before the Supreme Court by filing Civil Appeal No.6771 of 2000. Exhibit 33 produced by the claimants indicates that the Supreme Court had confirmed judgment of the High Court by order dated November 22, 2000. In view of the previous award, as modified by the High Court, this Court is of the opinion that the Reference Court did not commit any error at all in concluding that the claimants were entitled to compensation at the rate of Rs.80=00 per

sq.mtr. As noticed earlier, in previous case, notification under Section 4(1) of the Act was published on April 1, 1986 whereas notification under Section 4(1) of the Act for acquiring the lands, which are subject matter of instant appeals, was published in the Government Gazette on July 8, 1993. Thus, there was gap of about seven years between the two notifications and,therefore, the Reference Court has rightly granted 10% rise in price of the lands. Having regard to the time gap between the two notifications, ultimate analysis of the Reference Court that the claimants are entitled to additional compensation at the rate of Rs.116=00 per sq.mtr. can hardly be regarded as erroneous or illegal so as to warrant interference of this Court in above-numbered appeals. Neither the contentions which have been advanced on behalf of the Acquiring Authority to reduce the compensation determined by the Reference Court nor the points raised on behalf of the claimants for awarding more compensation than awarded by the Reference Court can be accepted. Therefore, the appeals which have been filed by the Acquiring Authority are liable to be dismissed.

9. So far as payment of interest on the amount, which is awarded under Section 23(1-A) & 23(2) of the Act is concerned, this Court finds that the same has been rejected by the Reference Court. In Sunder (supra) and Nagpur Improvement Trust (supra), the Supreme Court has authoritatively ruled that the claimants would be entitled to interest on the amount awarded under Section 23(1-A) & 23(2) of the Act. Therefore, to that extent First Appeal Nos.1072 of 2002 to 1074 of 2002 filed by the claimants will have to be accepted.

10. For the foregoing reasons, First Appeal Nos.1468 of 2002 to 1470 of 2002 filed by the Acquiring Body are dismissed. First Appeal Nos.1072 of 2002 to 1074 of 2002 are partly allowed, and it is held that the claimants would be entitled to interest on the amount awarded under Section 23(1-A) & 23(2) of the Act. Rest of the directions given by the Reference Court in the impugned award are hereby upheld. The appeals filed by the claimants are allowed to the extent indicated hereinabove. There shall be no order as to costs.

The Registry is directed to draw the decree in terms of this judgment.

(J.M.Panchal,J.)

(Smt.Abhilasha Kumari,J)

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